Pendakwa Raya lwn Muhammad Yasin bin Sulaiman

A

MAHKAMAH TINGGI (SHAH ALAM) — RAYUAN JENAYAH NO BA-42LB-16–12 TAHUN 2023, BA-42LB-17–12 TAHUN 2023 DAN BA-42LB-18–12 TAHUN 2023
NORSHARIDAH AWANG H
12 DISEMBER 2024

B

Prosedur Jenayah — Rayuan — Rayuan terhadap sabitan dan hukuman — Responden dituduh dengan kesalahan memiliki dadah jenis cannabis, menanam pokok cannabis dan memberikan diri sendiri dadah berbahaya — Hakim mahkamah sesyen ('HMS') mendapati bahawa responden telah memenuhi ujian 'legal insanity' berdasarkan laporan saksi pakar — HMS melepaskan responden dan memerintahkan responden dihantar ke Hospital Bahagia Ulu Kinta — Sama ada HMS boleh membuat dapatan dengan hanya bergantung pada keterangan saksi pakar apabila responden memilih untuk berdiam diri — Sama ada keterangan saksi pakar memadai untuk memenuhi ujian 'legal insanity' yang diperuntukkan di bawah s 84 Kanun Keseksaan — Sama ada HMS tersalah arah apabila beliau terlalu bergantung kepada keterangan saksi pakar tanpa mempertimbangkan keterangan yang dikemukakan oleh pihak pendakwaan secara menyeluruh — Akta Dadah Berbahaya 1952 ss 6, 6B(1), (3), 15(1)(a) & 39A(2) — Akta Keterangan 1950 s 8 — Kanun Keseksaan s 84 — Kanun Tatacara Jenayah s 348

C

D

E

F

Berdasarkan maklumat awam berkenaan dengan aktiviti pengedaran dadah yang dikatakan dijalankan di sebuah unit kondominium yang didiami oleh responden, pihak polis telah membuat serbuan ke atas unit kondominium tersebut dan menemui dadah jenis cannabis serta 17 pokok cannabis. Responden telah ditahan dan seterusnya dituduh dengan pertuduhan-pertuduhan berikut: (a) pertuduhan di bawah s 6 Akta Dadah Berbahaya 1952 ('ADB') yang boleh dihukum di bawah s 39A(2) ADB ('pertuduhan pindaan pertama'); (b) pertuduhan di bawah s 6B(1) ADB yang boleh dihukum di bawah s 6B(3) ADB ('pertuduhan pindaan kedua'); dan (c) pertuduhan di bawah s 15(1)(a) ADB yang boleh dihukum di bawah s 15(1) ADB ('pertuduhan pindaan ketiga'). Responden telah memilih untuk tidak mengemukakan keterangan mengenai dirinya yang tidak sempurna akal di bawah undang-undang walaupun wujudnya laporan psikiatri yang dikemukakan oleh SD1. Setelah mempertimbangkan laporan perubatan SD1, hakim mahkamah sesyen ('HMS') memutuskan bahawa responden telah memenu berhubung dengan isu ini, pihak pendakwaan bergantung kepada, antara lain, keterangan saksi mata iaitu pegawai serbuan ('SP3') berkenaan dengan kelakuan responden yang cemas dengan kehadiran pihak polis, dan juga keterangan SP7 berkaitan dengan jangka masa penanaman pokok

G

H

I

A cannabis serta alatan yang ditemui di rumah responden yang kebiasaannya digunakan dalam penanaman pokok cannabis.

Diputuskan, membenarkan rayuan pihak pendakwaan, mengenepikan keputusan HMS, dan mensabitkan responden seperti mana pertuduhan pindaan pertama, kedua dan ketiga:

B

(1) Berhubung dengan isu pertama, mahkamah mendapati bahawa keterangan SD1 dan laporan psikiatri semata-mata adalah tidak mencukupi untuk menyokong pembelaan responden sebagai tidak sempurna akal di bawah s 84 KK. Tiada keterangan daripada responden untuk menyokong apa yang telah dinyatakan oleh SD1 di dalam laporan beliau. Keterangan SD1 adalah dibuat berdasarkan hasil temubual dengan responden semasa tempoh pemerhatian di Hospital Bahagia. Oleh itu, laporan psikiatri yang dikemukakan oleh SD1 yang menyatakan bahawa responden adalah pesakit 'bipolar disorder' dan 'hyperthyroidism' hanyalah merupakan dengar cakap dan tidak dapat menyokong pembelaan responden secara keseluruhan (lihat perenggan 20–21 & 24).

C

D

(2) Prinsip undang-undang adalah jelas di mana responden hendaklah membuktikan dia tidak sempurna akal di bawah undang-undang (*legal insanity*) dan bukanlah tidak sempurna akal di bawah perubatan (*medical insanity*) semata-mata. Selain daripada membuktikan bahawa responden tidak sempurna akal pada waktu dan tempat dia melakukan jenayah tersebut, responden juga hendaklah membuktikan bahawa: (a) responden tidak berupaya untuk mengetahui keadaan perbuatannya; atau (b) responden tidak berupaya untuk mengetahui bahawa perbuatannya itu salah dan bertentangan dengan undang-undang (lihat perenggan 26 & 35).

E

F

(3) Berkenaan dengan isu kedua, mahkamah mendapati bahawa keterangan SD1 mengesahkan bahawa responden adalah tidak sempurna akal dari sudut perubatan semasa tangkapan namun keterangan saksi-saksi pendakwaan jelas menunjukkan bahawa responden mengetahui bahawa perbuatan-perbuatannya adalah salah dan bertentangan dengan undang-undang. Fakta bahawa responden menyimpan dadah serta menanam pokok di dalam rumahnya dengan pengudaraan suhu dikawal menggunakan alat penghawa dingin bersama lampu-lampu LED, alat pengukur 'pH' dan sebagainya menunjukkan bahawa hanya responden yang mempunyai akses ke atasnya dan memberi inferens bahawa responden ada pengetahuan bahawa perbuatan tersebut adalah salah dan bertentangan dengan undang-undang (lihat perenggan 38 & 40).

G

H

I

(4) Mahkamah mendapati bahawa terdapat kemungkinan bahawa responden mengalami beberapa tempoh 'euthymia' dan tidak sentiasa berada dalam keadaan manik atau tertekan sepanjang tempoh dia

menanam pokok cannabis. Fakta bahawa dia tidak memusnahkan pokok-pokok tersebut ketika dia mempunyai peluang untuk melakukannya menunjukkan bahawa dia mempunyai niat untuk menanam pokok cannabis tersebut. Tindakan responden juga adalah relevan di bawah s 8 Akta Keterangan 1950 yang menunjukkan bahawa responden mempuyai motif dan persediaan. Selain itu, keterangan SP3 bahawa responden terkejut dan cemas semasa SP3 hadir untuk serbuan turut relevan di bawah s 8 Akta Keterangan 1950 untuk menunjukkan bahawa responden adalah waras semasa tarikh tangkapan (lihat perenggan 44–46).

(5) Walaupun pihak pendakwaan tidak mencabar keterangan SD1 dan tidak mengemukakan saksi 'rebuttal', mahkamah tidak harus terikat dengan keterangan SD1 semata-mata tanpa mempertimbangkan fakta serta keterangan lain. Saksi pakar hanyalah berperanan untuk membantu mahkamah untuk mencapai sesuatu keputusan. Mahkamah mendapati bahawa terdapat percanggahan di antara keterangan pakar oleh SD1 dan saksi mata seperi SP3 yang memberi keterangan tentang keadaan kelakuan responden yang berdiri dalam keadaan cemas dan terkejut dengan kehadiran pihak polis. Di samping itu, pokok-pokok ganja yang ditanam oleh responden ini mengambil masa untuk membesar dan adalah tidak logik sepanjang masa tersebut responden berada di dalam keadaan tidak waras. Selain itu, 'cultivating' ganja ini memerlukan 'research' dan pembelajaran untuk memastikan bahawa pokok-pokok ganja tersebut hidup segar. Tindakan responden ini menunjukkan bahawa dia mempunyai pengetahuan serta sedar semasa perbuatan tersebut dilakukan (lihat perenggan 48–50 & 53).

(6) Berdasarkan kepada keseluruhan keterangan daripada saksi-saksi pendakwaan dan pembelaan, mahkamah berpendapat bahawa HMS telah terkhilaf dalam membuat keputusan melepaskan dan membebaskan responden serta memberi perintah agar responden diletakkan di bawah penjagaan selamat di Hospital Bahagia Ulu Kinta, Tanjung Rambutan, Perak untuk tempoh selama mana diperkenankan oleh DYMM Sultan Selangor sebagai mana peruntukan di bawah s 348(2) KTJ apabila responden gagal untuk memenuhi keperluan pembuktian ujian 'legal insanity' yang diperuntukkan di bawah s 84 KK (lihat perenggan 54).

(7) Dalam menjatuhkan sesuatu hukuman, mahkamah hendaklah memberi pertimbangan utama kepada kepentingan masyarakat berbanding kepentingan peribadi tertuduh. Mahkamah perlu mengambil kira bahawa responden yang merupakan seorang yang terkenal (*public figure*) dan memberi pengaruh yang luas kepada masyarakat seharusnya menunjukkan contoh tauladan yang baik kepada masyarakat dan generasi yang akan datang. Oleh yang demikian, berdasarkan kepada

hujahan daripada kedua-dua pihak, mahkamah telah menimbangkan dan menjatuhkan hukuman seperti berikut: (a) bagi pertuduhan pindaan pertama, lapan tahun penjara berkuatkuasa daripada tarikh tangkap dan sepuluh sebatan; (b) bagi pertuduhan pindaan kedua, penjara seumur hidup (30 tahun) berkuatkuasa daripada tarikh tangkap dan enam sebatan; dan (c) bagi pertuduhan pindaan ketiga, sepuluh bulan penjara berkuatkuasa daripada tarikh tangkap. Mahkamah memerintahkan agar hukuman bagi ketiga-tiga pertuduhan tersebut berjalan serentak kerana melibatkan transaksi yang sama (lihat perenggan 74–76).

[English summary

Based on the information given by the public regarding drug trafficking activities allegedly carried out in a condominium unit occupied by the respondent, the police raided the condominium unit and found cannabis and 17 cannabis plants. The respondent was arrested and subsequently charged with the following charges: (a) a charge under s 6 of the Dangerous Drugs Act 1952 ('the DDA') punishable under s 39A(2) of the DDA ('the first amended charge'); (b) a charge under s 6B(1) of the DDA punishable under s 6B(3) of the DDA ('the second amended charge'); and (c) a charge under s 15(1)(a) of the DDA punishable under s 15(1) of the DDA ('the third amended charge'). The respondent chose not to give evidence that he was of unsound mind under the law despite the existence of a psychiatric report submitted by SD1. After considering SD1's medical report, the sessions court judge ('the SCJ') ruled that the respondent had met the 'legal insanity' test set out under s 84 of the Penal Code ('the PC'). At the end of the case — in relation to this issue, the prosecution relied on, among others, the evidence of an eyewitness, namely the raiding officer ('SP3') regarding the respondent's behaviour of being alarmed by the presence of the police, and also the evidence of SP7 regarding the period of cultivation of the cannabis plants and the tools found in the respondent's house which were usually used in the cultivation of cannabis plants.

Held, allowing the prosecution's appeal, setting aside the SCJ's decision, and convicting the respondent as per the first, second and third amended charges:

(1) In relation to the first issue, the court found that the evidence of SD1 and the psychiatric report alone were insufficient to support the respondent's defence of unsound mind under s 84 of the PC. There was no evidence from the respondent to support what SD1 had stated in his report. SD1's evidence was based on the results of an interview with the respondent during the observation period at Hospital Bahagia. Therefore, the psychiatric report submitted by SD1 stating that the respondent was a patient of 'bipolar disorder' and 'hyperthyroidism' was merely hearsay and could not support the respondent's defence as a whole (see paras 20–21 & 24).

(2) The principle of law was clear that the respondent must prove that he was

legally insane (legal insanity) and not merely medically insane (medical insanity). Apart from proving that the respondent was insane at the time and place he committed the crime, he must also prove that: (a) he was incapable of knowing the nature of his act; or (b) he was incapable of knowing that his act was wrong and contrary to the law (see paras 26 & 35).

(3) With regard to the second issue, the court found that the evidence of SD1 confirmed that the respondent was medically unsound at the time of arrest but the evidence of the prosecution witnesses clearly showed that the respondent knew that his actions were wrong and against the law. The fact that the respondent stored drugs and planted trees in his house with temperature ventilation being controlled by using air conditioner, LED lights, 'pH' measuring devices and etc showed that only the respondent had access to them and gave an inference that the respondent had knowledge that the actions were wrong and contrary to the law (see paras 38 & 40).

(4) The court found that it was possible that the respondent experienced periods of 'euthymia' and was not constantly in a manic or depressed state throughout the period he was planting the cannabis plants. The fact that he did not destroy the plants when he had the opportunity to do so showed that he had the intention to plant the cannabis plants. The respondent's actions were also relevant under s 8 of the Evidence Act 1950 which showed that the respondent had motive and preparation. In addition, the evidence of SP3 that the respondent was shocked and alarmed when SP3 was present for the raid was also relevant under s 8 of the Evidence Act 1950 to show that the respondent was of sound mind at the date of arrest (see paras 44–46).

(5) Although the prosecution did not challenge SD1's evidence and did not present any 'rebuttal' witnesses, the court should not be bound by SD1's evidence alone without considering the facts and other evidence. The role of an expert witness was merely to assist the court in reaching a decision. The court found that there were discrepancies between the expert evidence by SD1 and eyewitnesses such as SP3 who testified about the respondent's behavior as he stood in a state of anxiety and shock at the presence of the police. In addition, the cannabis plants planted by the respondent took time to grow and it was illogical for the respondent to be in an insane state during the whole period. In addition, 'cultivating' cannabis required research and learning to ensure that the cannabis plants were alive and well. The respondent's actions showed that he had knowledge and was conscious at the time of the commission of the act (see paras 48–50 & 53).

(6) Based on the overall evidence from the prosecution and defence witnesses, the court was of the opinion that the SCJ erred in making the

decision to release and acquit the respondent and to order that the respondent be placed under secure custody at the Hospital Bahagia Ulu Kinta, Tanjung Rambutan, Perak for such period as may be permitted by DYMM Sultan of Selangor as provided for under s 348(2) of the CPC when the respondent failed to meet the requirements of proving the 'legal insanity' test as provided for under s 84 of the PC (see para 54).

(7) In imposing a sentence, the court must give primary consideration to the interests of the public over the personal interests of the accused. The court must take into account that the respondent, who was a public figure and exerted a wide influence on society, should set a good example for society and future generations. Therefore, based on the submissions from both parties, the court had considered and imposed the following sentences: (a) for the first amended charge, eight years imprisonment with effect from the date of arrest and ten strokes of the cane; (b) for the second amended charge, life imprisonment (30 years) with effect from the date of arrest and six strokes of the cane; and (c) for the third amended charge, ten months' imprisonment with effect from the date of arrest. The court ordered that the sentences for all the three charges to run concurrently because they involved the same transaction (see paras 74–76).]

Kes-kes yang dirujuk

Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534, MR (dirujuk)
Hoo Ah Tee v PP [2013] 4 MLJ 636; [2013] 3 AMR 649, MR (dirujuk)
John a/k Nyumbei v PP [2007] 7 MLJ 206, MR (dirujuk)
Khairul Azizi bin Abdul Jalil v PP [2024] MLJU 1463, MR (dirujuk)
Luqman Hadi Mustapa v PP (Rayuan Jenayah 05(M)-161–09 Tahun 2022)(tidak dilaporkan), MP (dirujuk)
Ong Lai Kim v PP and other appeals [1991] 3 MLJ 111, MT (dirujuk)
PP v Muhammad Suhaimi Abdul Aziz [2004] 1 CLJ 378, MR (dirujuk)
PP v Chot Saik Kam [1991] 1 MLJ 193, MT (dirujuk)
PP v Misbah bin Saat [1997] 3 MLJ 495; [1998] 1 CLJ 759, MT (dirujuk)
PP v Mohd Rozani bin Yahaya [2025] 1 MLJ 50, MP (dirujuk)
PP v Shalima Bi [2016] 1 MLJ 799, MR (dirujuk)
PP v Teo Heng Chye [1989] 3 MLJ 205, MT (dirujuk)
PP v Ezam bin Abu Hasan [2022] MLJU 2710, MT (dirujuk)
Pheh Boon Kheang v Peh Boon Wang [2007] 2 MLJ 785; [2007] 7 CLJ 616, MT (dirujuk)
R v Roberts and related appeal [1982] 1 All ER 609, MR (dirujuk)
R v Saleem [1964] Crim LR 482 (dirujuk)
Regina v Windle [1952] 2 QB 826, MR (dirujuk)
Sek Kim Wah v PP [1988] 1 MLJ 348, MR (dirujuk)
Surendra Mishra v State of Jharkhand AIR 2011 SC 627, MA (dirujuk)
Syahmie bin Hassan v PP [2017] 5 MLJ 598, MR (dirujuk)

Tan Sri Abdul Rahim bin Mohd Noor v PP [2001] 3 MLJ 1; [2001] 4 CLJ 9, MR (dirujuk)
Wong Kai Chuen Philip v PP [1991] 1 MLJ 321, MT (dirujuk)
Wong Swee Chin v PP [1981] 1 MLJ 212; [1980] CLJU 138, MP (dirujuk)

Undang-undang yang dirujuk

Akta Dadah Berbahaya 1952 ss 6, 6B, 6B(1), (3), 15(1), (1)(a), 39A(2), Jadual Pertama
Akta Keterangan 1950 ss 8, 105
Kanun Keseksaan s 84
Kanun Tatacara Jenayah ss 165(1), 348, 348(2), 399

Raja Zaizul Faridah bt Raja Zaharudin (Ahmad Zuhaini bin Mahamad bersamanya) (Pejabat Penasihat Undang-Undang Negeri Selangor) bagi pihak perayu.
Ariff bin Hussein (Azizzul Shariman Mat Yusoff dan Nur'Ain Shahiera bt Khalid bersamanya) (Azizul & Arif) bagi pihak responden.

Norsharidah Awang H:

PENGENALAN

[1] Ini adalah rayuan pendakwa raya terhadap keputusan hakim mahkamah sesyen ('HMS') bertarikh 29 November 2023 di mana HMS telah melepaskan dan seterusnya responden dan memerintahkan responden dihantar ke Hospital Bahagia Ulu Kinta untuk tempoh selama mana yang diperkenankan oleh Duli Yang Mana Mulia ('DYMM') Sultan Selangor selaras dengan s 348 Kanun Tatacara Jenayah bagi satu pertuduhan di bawah s 6 Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah s 39A(2) Akta yang sama, satu pertuduhan di bawah s 6B(1) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah s 6B(3) Akta yang sama dan satu pertuduhan di bawah s 15(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah s 15(1) Akta yang sama. Rayuan adalah terhadap keseluruhan keputusan tersebut.

PERTUDUHAN

[2] Responden telah dituduh dengan tiga pertuduhan di bawah Akta Dadah Berbahaya 1952. Pertuduhan-pertuduhan adalah seperti berikut:

> Pertuduhan Pindaan Pertama (No BA-42LB-17–12 Tahun 2023):
>
> > Bahawa kamu pada 24.03.2022 jam lebih kurang 5.30 petang di rumah No A-12–5, Casa Indah Kondominium, Persiaran Surian Damansara Indah Resort Home, PJU Kata Damansara, dalam Daerah Petaling Jaya, dalam Negeri Selangor, telah didapati ada dalam milikan kamu dadah berbahaya jenis 'Cannabis' seberat 193.7g. Oleh itu, kamu telah melakukan satu kesalahan di bawah seksyen 6 Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah

seksyen 39A(2) Akta yang sama.

Hukuman:

Hendaklah selain dikenakan hukuman disediakan untuk kesalahan di bawah seksyen di bawah mana orang itu telah pun didapati bersalah, dihukum dengan penjara seumur hidup atau untuk suatu tempoh tidak kurang dari lima tahun dan ia juga akan dikenakan hukuman sebat tidak kurang daripada sepuluh sebatan.

Pertuduhan Kedua (No BA-42LB-16–2023):

Bahawa kamu pada 24.03.2022 jam lebih kurang 5.30 petang di rumah No A-12–5, Casa Indah Kondominium, Persiaran Surian Damansara Indah Resort Home, PJU Kota Damansara, dalam Daerah Petaling Jaya, dalam Negeri Selangor, telah menanam 17 pokok dalam pasu plastik berisi tanah yang mana daripadanya Cannabis boleh diperolehi sama ada secara terus atau secara tidak langsung, dengan itu kamu telah melakukan satu kesalahan di bawah s 6B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah s 6B(3) Akta yang sama.

Hukuman:

Mana-mana orang yang melanggar seksyen ini, adalah bersalah atas suatu kesalahan terhadap akta ini dan jika disabitkan, hendaklah dipenjara seumur hidup dan sebat tidak kurang daripada enam sebatan.

Pertuduhan Ketiga (No BA-42LB-18–12 Tahun 2023):

Bahawa kamu pada 24.03.2022 jam lebih kurang 11.05 malam di Pejabat Narkotik IPD Petaling Jaya, Menara Choy Fook On dalam Daerah Petaling Jaya, dalam Negeri Selangor, telah didapati memberikan diri kamu sendiri dadah berbahaya jenis 11-NOR-DELTA-9-TETRAHYDROCANNABINOL-9-CARBOXYLIC ACID yang mana jenis dadah tersebut adalah dadah berbahaya yang ditetapkan di bahagian III dari Jadual Pertama Akta Dadah Berbahaya 1952. Oleh itu, kamu didapati telah melakukan satu kesalahan di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 15(1) Akta yang sama.

Hukuman:

Jika disabitkan kesalahan hendaklah dedenda tidak lebih daripada lima ribu ringgit atau dikenakan hukuman penjara selama tempoh tidak lebih daripada dua tahun.

FAKTA KES

[3] Pada tarikh dan masa seperti di dalam pertuduhan, Pegawai Serbuan ('SP3') Ibu Pejabat Polis ('IPD') Petaling Jaya bersama pasukan telah membuat serbuan berdasarkan maklumat awam berkaitan pengedaran dadah di A-12–15 Casa Indah Kondominium, Persiaran Surian Damansara Indah Resort Home,

PJU 3 Kota Damansara, Petaling Jaya, Selangor.

[4] SP3 menahan responden di dalam rumah dan merampas barang rampasan seperti berikut:

(a) dua plastik lutsinar bertulis 'diamond' dalam satu bekas plastic hitam di atas cabinet dapur yang mengandungi 193.7g dadah berbahaya jenis cannabis;

(b) satu almari kain yang di dalamnya mengandungi tiga pokok cannabis dengan rampasan lain seperti alat pengudaraan, pengukur pH, penyukat suhu, lampu grow light, lampu LED, lampu limpah dan alat menyiram tanaman di ruangan dapur sebelah kiri rumah;

(c) 13 pokok cannabis di bahagian bawah sebelah kanan almari pakaian dalam bilik pertama rumah; dan

(d) satu pokok cannabis di ruangan balkoni rumah.

[5] Pegawai Penyiasat Narkotik ('SP6'), Ibu Pejabat Polis ('IPK') Selangor turut menyatakan bahawa barang kes sentiasa berada dalam kawalan dan jagaannya sehinggalah ianya diserahkan kepada Dr Saravanan Kumar, Ahli Kimia Narkotik Jabatan Kimia Malaysia ('SP1') dan Dr Alia bt Shahril, Ahli Kimia DNA Jabatan Kimia Petaling Jaya ('SP2') untuk dianalisa.

[6] SP1 telah menerima kesemua barang kes daripada SP6 dalam keadaan bersih dan baik. Beliau turut menjalankan analisa bagi 17 pokok di dalam pasu dan hasil analisa mendapati bahawa kesemua 17 pokok tersebut adalah tumbuhan jenis cannabis. Laporan Kimia di bawah s 399 Kanun Tatacara Jenayah bagi analisa dadah tersebut (eksh P5) dan cannabis disenaraikan dalam Jadual Pertama Akta Dadah Berbahaya.

[7] Encik Rusli bin Ibrahim, Pegawai Sains Kimia Hayat (SP5) telah mengesahkan bahawa urin atau sampel air kencing responden mengandungi THC dan telah menyediakan Laporan Patologi (eksh P106).

PETISYEN RAYUAN

[8] Perayu telah memfailkan petisyen rayuan (lampiran 128) dan memberi alasan-alasan seperti berikut:

(a) HMS telah terkhilaf dari segi undang-undang dan fakta apabila memutuskan untuk melepaskan dan membebaskan responden tanpa mendengar keterangan responden;

(b) HMS telah terkhilaf dari segi undang-undang dan fakta apabila

memutuskan bahawa responden telah berjaya membangkitkan pembelaan ketidakwarasan;

(c) HMS tersalah arah apabila ia terlalu bergantung dengan keterangan SD1 tanpa mempertimbangkan keterangan secara menyeluruh yang dikemukakan oleh pendakwaan;

(d) HMS telah terkhilaf dari segi undang-undang dan fakta apabila memutuskan bahawa pembelaan responden telah memenuhi ujian 'legal insanity' yang diperuntukkan di dalam s 84 Kanun Keseksaan hanya berdasarkan keterangan SD1; dan

(e) HMS telah terkhilaf dari segi undang-undang dan fakta apabila memutuskan bahawa responden tidak mengetahui peruatannya salah dan bertentangan di sisi undang-undang walaupun terdapat keterangan mengenai pengetahuan responden bagi kesalahan-kesalahan yang dipertuduhkan.

ALASAN PENGHAKIMAN

[9] Di antara alasan-alasan HMS dalam melepaskan dan membebaskan responden serta perintah di bawah s 348 Kanun Tatacara Jenayah adalah seperti berikut:

(a) pihak pendakwaan tidak mengemukakan apa-apa keterangan untuk menyangkal laporan perubatan (eksh D121) yang disediakan oleh Dr Ian Llyod Anthony ('SD1') dengan memanggil mana-mana saksi 'rebuttal' untuk mematahkan keterangan SD1;

(b) tiada laporan perubatan pakar lain yang setara dengan SD1 dikemukakan oleh pihak pendakwaan;

(c) cabaran yang dibagkitkan oleh pihak pendakwaan terhadap SD1 melalui pemeriksaan balas semata-mata tidak memadai untuk menunjukkan keterangan SD1 tidak munasabah;

(d) melalui keterangan saksi-saksi pendakwaan dan pembelaan mendapati responden ada melakukan perbuatan sebagaimana di dalam ketiga-tiga pertuduhan namun semasa kejadian sebagaimana didakwa dalam pertuduhan, responden berada di dalam keadaan mental yang tidak waras; dan

(e) walaupun responden sedar akan sifat perbuatannya, namun begitu gejala-gejala mania yang dialaminya pada masa tersebut menyebabkan kemerosotan kognitif pada tahap teruk sehingga responden tidak mampu untuk mengetahui bahawa perbuatannya adalah salah dan bertentangan dari segi undang-undang.

Isu pertama

Sama ada HMS boleh membuat dapatan dengan hanya bergantung pada keterangan SD1 apabila responden memilih untuk berdiam diri

[10] Seksyen 105 Akta Keterangan 1950 dengan jelas meletakkan beban untuk membangkitkan pembelaan tidak sempurna akal di bawah s 84 Kanun Keseksaan kepada responden. Peruntukan tersebut menyatakan seperti berikut:

> When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of those circumstances.

[11] Rujuk kepada kes *Syahmie bin Hassan v Public Prosecutor* [2017] 5 MLJ 598 di mana mahkamah merujuk kepada *John a/k Nyumbei v Public Prosecutor* [2007] 7 MLJ 206 dan mendapati bahawa:

> 15. It is also settled law that the burden of proof rests on the person who raises the defence of insanity (see *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537; [1998] 2 CLJ 383 also *Baharom v Public Prosecutor* [1960] 1 MLJ 249; [1960] 1 LNS 9). And it is only the accused person who has this right to raise a defence of insanity. It is not open to the court or the prosecution to raise it (see *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495; [1998] 1 CLJ 759).

[12] Di dalam kes ini, responden telah memilih untuk tidak mengemukakan keterangan mengenai dirinya yang tidak sempurna akal di bawah undang-undang (*legal insanity*) walaupun laporan psikiatri yang dikemukakan oleh SD1 iaitu Dr Ian Lloyd Anthony telah mendapati bahawa responden adalah layak dihadapkan ke mahkamah untuk dibicarakan serta mampu untuk membela diri (rujuk ms 161 Jld 3 rekod rayuan).

[13] HMS dalam alasan penghakimannya di dalam rekod rayuan Jld 1, ms 34 mengakui bahawa responden ada melakukan perbuatan sebagai di dalam ketiga-tiga pertuduhan tersebut setelah meneliti keseluruhan keterangan saksi-saksi pendakwaan dan pembelaan.

[14] Oleh itu, beban untuk membuktikan pembelaan tidak sempurna akal masih terletak pada responden untuk mengemukakan keterangan fakta dan keadaan mental responden secara kejadian. Tanpa keterangan tersebut, mahkamah sebagai 'fact finder' tidak dapat membuat penilaian keadaan responden adalah tidak waras ketika itu.

[15] Dalam kes Mahkamah Persekutuan *Luqman Hadi Mustapa v Public Prosecutor* (Rayuan Jenayah 05(M)-161–09 Tahun 2022) (tidak dilaporkan)

di mana Mahkamah Persekutuan telah bersetuju dengan dapatan Mahkamah Rayuan bahawa ketiadaan keterangan bahawa OKT tidak waras semasa kejadian dan tidak tahu apa yang dilakukan adalah bertentangan dengan undang-undang ditambah dengan pendirian OKT untuk berdiam diri dan laporan psikiatri doctor adalah tidak disokong, maka mahkamah telah sebulat suara menolak pembelaan OKT tidak sempurna akal di bawah s 84 Kanun Keseksaan:

> [38] ... Again, we reiterated here that there is no evidence by the defence that the appeliant was insane at the material time and did not know what he did was wrong at the material time when the appellant elected to remain silent and Dr Badiah's psychiatric report was not substantiated.

[16] SP7 telah memberi keterangan tentang pokok cannabis yang telah dirampas daripada rumah responden serta alatan yang ditemui di rumah tersebut yang konsisten digunakan di dalam penanaman pokok cannabis.

[17] Keterangan SP7 berkaitan dengan jangka masa penanaman di mana ianya mengambil beberapa minggu untuk tumbuh di samping penjagaan yang rapi. Keterangan SP7 telah menjelaskan bahawa ukuran tumbuhan-tumbuhan yang dijumpai di rumah responden adalah berusia dua hingga lapan minggu, dengan ukuran yang berbagai.

[18] Keterangan ini semua menunjukkan bahawa responden mempunyai pengetahuan serta membuktikan bahawa keadaan kesihatan mentalnya adalah waras semasa dia ditahan oleh pegawai serbuan SP3.

[19] Responden hanya bersandarkan kepada keterangan SD1 untuk membangkitkan pembelaan di bawah s 84 KK. Prinsip bahawa laporan psikiatri semata-mata adalah tidak mencukupi untuk membangkitkan pembelaan di bawah s 84 KK telah dijelaskan oleh Visu Sinnadurai J dalam kes *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495; [1998] 1 CLJ 759 yang menyatakan seperti berikut:

> The mere fact that the court has cognisance of a medical report to indicate that at the time of the commission of the offence the accused was of unsound mind, is irrelevant at the stage when the accused is certified fit to stand trial and he chooses to plead guilty.
>
> In any case, for purposes of establishing insanity as a defence, the medical report by itself is insufficient. It should be emphasized that for purposes of s 84 of the Penal Code, what needs to be established is legal insanity and not mere medical insanity. Besides establishing that the accused was of unsound mind at the time he committed the offence, he needs to go further to establish that either:
>
> (a) He was incapable of knowing the nature of the act; or

(b) that he was incapable of knowing what he was doing was wrong or contrary to law.

[20] Keterangan SD1 dan laporan psikiatri semata-mata adalah tidak mencukupi untuk menyokong pembelaan responden sebagai tidak sempurna akal di bawah s 84 KK. Tiada keterangan daripada responden untuk menyokong apa yang telah dinyatakan oleh SD1 di dalam laporan beliau dan ia merupakan satu dengar cakap sahaja.

[21] Keterangan SD1 adalah dibuat berdasarkan hasil temubual dengan responden semasa tempoh pemerhatian di Hospital Bahagia. Laporan SD1 hanya bersifat dengar cakap tidak menyokong pembelaan responden.

[22] Hal ini demikian kerana kejadian tersebut berlaku pada 24 Mac 2022, namun laporan psikiatri SD1 (eksh D121) adalah pada 4 Julai 2023. Bukan itu sahaja, tetapi laporan perubatan UMSC, UKM, PPUM dan Pantai Hospital disediakan oleh doktor selepas tarikh kejadian, menyatakan bahawa mereka telah merawat responden sejak tahun tertentu. Walau bagaimanapun, laporan perubatan tepat dari doktor pada tarikh mereka memeriksa responden tidak sama sekali disediakan. Oleh itu, sebenarnya SD1 tidak dapat mengambil tahu keadaan responden pada masa kejadian, lebih-lebih lagi apabila responden memilih untuk berdiam diri semasa kes pembelaan.

[23] Kes yang boleh dirujuk adalah *Public Prosecutor v Ezam bin Abu Hasan* [2022] MLJU 2710 di mana mahkamah memutuskan bahawa:

> [51] ... Dr Ian in his oral testimony in court emphasised that the history must be corroborated to allow for the reconstruction of the accused mental state.
>
> [52] This court acknowledges the necessity for corroborations of past history as without it, relying on retrospective assessment can be a very dangerous ground ...
>
> ...
>
> [62] All the analysis done by SP14 as exhibited in P29 by way of a retrospective assessment would still need to satisfy the corroboration rule as suggested by SP14 himself. Unfortunately, nothing was placed before this court to show that there was any exercise to that effect done, when SP14 carried out the said evaluation.
>
> ...
>
> [101] It must be added further, that the three reports referred to by the DPP to SD3 being reports from Seremban, Jempol and Kuala Pilah hospitals as listed in P29 para 4(g), (h) and (i) all are dated July and August 2018, a month or two after the incident 5 June 2018. These reports including the Hospital Tuanku Jaafar, Seremban report dated 14 August 2018 suggested by the DPP to have diagnosed the accused with bipolar disorder, were not tendered hence it is not sure how the accused came about to be present in that said hospitals during that month or

possible earlier. With the absence of any referral to these reports physically, it is unknown when the accused was actually present in these hospitals or how that finding was arrived at. Thus, to this court's view the omission by SD3 to have sight of these reports in P29, is immaterial as they are reports after the incident, with different circumstances the accused was in compared to reports before the said incident.

[24] Kes di atas adalah serba sedikit berbeza dengan kes ini kerana laporan dalam kes tersebut adalah berkaitan dengan laporan perubatan selepas kejadian. Namun, dalam kes ini, isu yang dipertikaikan adalah berkenaan laporan perubatan yang dikemukakan kepada mahkamah di mana ia dinyatakan bahawa responden adalah pesakit mereka. Namun begitu, tiada laporan yang menunjukkan perincian-perincian bila responden didiagnosis atau dimasukkan ke hospital yang dikemukakan kepada mahkamah. Oleh itu, laporan psikiatri yang dikemukakan oleh SD1 yang menyatakan bahawa responden adalah penyakit bipolar disorder dan hyperthyroidism hanyalah merupakan dengar cakap dan tidak dapat menyokong pembelaan responden secara keseluruhan.

Isu kedua

Sama ada keterangan SD1 memadai untuk memenuhi ujian legal insanity yang diperuntukkan di bawah s 84 Kanun Keseksaan

[25] Seksyen 84 Kanun Keseksaan menyatakan seperti berikut:

> Nothing is an offence which is done by a person who, at the time of doing it by reason of unsoundness of mind is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

[26] Prinsip undang-undang adalah jelas di mana responden hendaklah membuktikan dia tidak sempurna akal di bawah undang-undang ('legal insanity') dan bukanlah tidak sempurna akal di bawah perubatan ('medical insanity') semata-mata.

[27] Rujuk kepada kes *Regina v Windle* [1952] 2 QB 826, di mana CJ Lord Goddard memutuskan bahawa:

> Under the rules laid down in *McNaghten*'s case (1843) 10 CI & F 200, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong. 'Wrong' here means contrary to law and not wrong according to the opinion which the person accused or other people might hold on the question whether the act might be morally justified.

[28] Kembali kepada perbezaan *medical insanity* dengan *legal insanity*, sedar bahawa s 84 KK adalah berkenaan dengan *legal insanity* dan bukan *medical insanity* (*Hoo Ah Tee v Public Prosecutor* [2013] 4 MLJ 636; [2013] 3 AMR 649):

> ... The Prime Minister referred the matter to the House of Lords to ask 12 judges of the Court of Common Pleas to give their opinions of precisely when medical insanity could be regarded as legal insanity. In June 1843, the same Lord Chief Justice who had presided over M'Naghten's trial, delivered the collective opinion that:
>
> > To establish a defence on the grounds of insanity it must be clearly proved, that, at the time of committing the act, the party accused was laboring under such a defect or reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did not know it, that he did not know that what he was doing was wrong.

[29] Oleh hal yang demikian, setiap orang yang mengalami gangguan mental tidak secara automatik dikecualikan daripada tanggungjawab jenayah. Perbezaan perlu dibuat antara 'legal insanity' dan 'medical insanity'. Mahkamah hanya mengambil kira 'legal insanity dan bukan 'medical insanity' (*Surendra Mishra v State of Jharkhand* AIR 2011 SC 627).

[30] Rujukan juga kepada kes Mahkamah Rayuan *John a/k Nyumbei v Public Prosecutor* [2007] 7 MLJ 206; [2007] 2 CLJ 509 di mana diputuskan:

> 12. Thus, under s 84 Penal Code, criminality has to be determined according to that legal test and not merely by the mental state of an accused person according to the medical test.
>
> 13. There is a distinction between the notion of a legal insanity and medical insanity. Not every form of insanity exempts a person from criminal responsibility. Only legal insanity provides that exemption under s 84 of the Penal Code. The specie of insanity addressed by s 84 is the one that impairs the cognitive faculties of a person. Its nature and extent must be that to make the offender incapable of knowing the nature of his act, or that he is doing is wrong or contrary to law. The criminality of an act therefore must be determined by this test laid down in s 84 as distinguished from the medical test.

[31] Selain itu, kes *Public Prosecutor v Muhammad Suhaimi Abdul Aziz* [2004] 1 CLJ 378 juga memutuskan bahawa:

> It is settled law that the defence of insanity under s 84 is concerned with the accused's legal responsibility at the time of the alleged offence and not with whether he was medically insane at that time.

[32] Selanjutnya, seperti mana yang diputuskan oleh Mahkamah Rayuan dalam kes *Public Prosecutor v Shalima Bi* [2016] 1 MLJ 799; [2016] 2 CLJ

231:

[52] Thus, where medical insanity has been established, the defence of insanity under s 84 of the Code is only available where, at the time the accused committed the act, he:

(a) did not know the nature of his act; or

(b) did not know that what he was doing was wrong; or

(c) did not know that what he was doing was contrary to law.

[53] What a trial judge has to do as the first step in determining whether the defence of insanity has been established is to see whether the accused was medically insane at the time he committed the act. Expert medical evidence is necessary as the question of whether he was medically insane at any particular point in time is in the realm of forensic science. It is not something that the court can determine without the benefit of expert opinion.

[54] Once that threshold is crossed, the next step is for the trial judge to consider whether; by reason of medical insanity, the accused was incapable of knowing nature of his act or that what he was doing was either wrong or contrary to law. Expert medical opinion is irrelevant as the question of whether the accused was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law is a matter to be inferred from the proved facts and circumstances and not from expert medical opinion. It is purely a question of fact for the trial judge to determine.

[33] Dalam kes *Khairul Azizi bin Abdul Jalil v Public Prosecutor* [2024] MLJU 1463, mahkamah memutuskan bahawa:

[40] As can be seen, under s 84 of the Penal Code the court is concerned with legal insanity, and not with medical insanity. There can be no legal insanity unless an accused person can show that his cognitive faculties, as a result of mental illness or mental disorder, was so completely impaired as to render him incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law. His mental condition can be inferred or established from the circumstances which preceded, attended and followed the commission of the crime. It is by this test, as distinguished from the medical test, that the criminality of the act is to be determined.

[41] Even assuming that Dr Rabiah's evidence is accepted that the appellant was suffering from medical insanity, to rely on the defence of unsoundness of mind, it is incumbent on the appellant to establish that he was also suffering from legal insanity. The trial judge found that the appellant had failed to establish by credible evidence that he was suffering from legal insanity. In reaching such a conclusion, he had considered the appellant's behaviour, which preceded, attended or followed the crime (see at para 23).

...

[43] The trial judge accepted DW2's evidence ie that the accused was medically insane at the time of the offence but found on the evidence on the whole facts and

circumstances that the mental impairment was not so substantial that he had lost his cognitive faculties to such a degree that he did not know the nature of his act or that it was wrong or contrary to law.

[34] Mahkamah ini juga merujuk keputusan terkini Mahkamah Persekutuan oleh YA Dato' Zabariah Mohd Yusof (MPRJ No 05(LB)-117–11 Tahun 2023(D)) di dalam kes *Public Prosecutor v Mohd Rozani bin Yahaya* [2025] 1 MLJ 50, di mana keputusannya adalah seperti berikut:

[41] Whereas, legal insanity involves a distinct set of criteria and considerations within the framework of the legal system. Unlike medical insanity, which involves a question of mental health only, legal insanity goes beyond mental health and pertains to one's legal capacity and responsibility for their actions. It involves a legal determination that a person, due to a severe mental disorder, is not criminally responsible for their actions. It is a legal status that affects the person's accountability for his actions in a court of law. This accords the rationale of legal insanity being a recognised defence in criminal law, as it implies that, at the time when committing an offence, the accused was found to be in a state of not understanding the nature and consequences of his/her actions. Legal insanity is determined by legal standards, which may vary by jurisdiction. It entails assessments by mental health experts and legal professionals to analyse and evaluate the accused's mental state at the time of the alleged offence committed. The consequences of legal insanity may result in the accused being declared not criminally responsible or being committed to a psychiatric institution instead of facing traditional criminal penalties.

[42] For the accused, to succeed in the defence of legal insanity, the accused must establish, often through psychiatric or psychological evaluations, that he/she was not in control of his/her reasoning during the commission of the offence. This defence is anchored in s 84 of the Penal Code, which outlines the conditions under which an accused can be considered legally insane.

[43] The burden of proof for medical and legal insanity also differs. In legal insanity, the onus lies with the accused to prove his/her mental state at the time when the offence was committed pursuant to s 105 of the Evidence Act 1950. This burden, though significant, is not as onerous as the prosecution to prove the accused's guilt. It is on a balance of probabilities and not merely to cast a reasonable doubt in the prosecution's case (see *Rajagopal v Public Prosecutor* [1977] 1 MLJ 6; [1976] 1 MLRA 90 and *Goh Yoke v Public Prosecutor* [1970] 1 MLJ 63; [1969] 1 MLRA 366).

[44] To establish legal insanity, the accused must present a prima facie case, supported by reasonable materials. This involves presenting evidence of the accused's conduct, before, during, and immediately after the commission of the alleged offence, corroborated with the relevant medical documentation. The purpose is to convince the court that due to the accused's mental capacity, the accused should be exempt from full criminal responsibility.

.....

[55] It is trite that the court is not obliged to accept the opinion of the medical

A expert and the question of whether a defence of legal insanity has been made out or not is a matter for the court to decide. However, the burden of proof for establishing an insanity defence under s 84 of the Penal Code lies with the accused.

B **[35]** Oleh yang demikian, jelas bahawa selain daripada membuktikan bahawa responden tidak sempurna akal pada waktu dan tempat dia melakukan jenayah tersebut, responden juga hendaklah membuktikan bahawa:

(a) responden tidak berupaya untuk mengetahui keadaan perbuatannya (*incapable of knowing the nature of the act*); atau

C

(b) responden tidak berupaya untuk mengetahui bahawa perbuatannya itu salah dan bertentangan dengan undang-undang (*incapable of knowing what he was doing was wrong or contrary to law*).

D **[36]** Rujuk kepada kes *Syahmie bin Hassan v Public Prosecutor* [2017] 5 MLJ 598, mahkamah telah memutuskan bahawa:

> [36] We were in entire agreement with the above reasoning of the learned trial judge. The whole conduct of the appellant on the day of the incident, from the time he broke into the deceased's house up until his elaborate attempt to clear up the
E evidence and escape, were patently inconsistent with acts of someone who was mentally unsound and incapable of knowing the nature and consequences of his or her acts. The appellant obviously knew that by breaking into the deceased's house and stealing her valuables, he was committing criminal acts and as such, he was prepared to silence her from exposing his crime. That was his motive. He obviously
F knew that by strangling her, he would silence her and ensure that his crime would not be exposed. In the midst of strangling her, he even had the presence of mind to check her heartbeat and hand movement to make sure that she really was dead. He even came back later and stole more of her belongings and again had the presence of mind to take away a copy of her police report made after his previous break-in. Finally, by his attempt at disposing off the dead body and then running away after
G being caught red-handed carrying the dead body in a rolled up mattress by the security guards, he obviously knew what he did was contrary to law. Under such circumstances, the fact that he was diagnosed to be suffering from a certain mental illness coupled with histories of slow learning ability, strange behaviors and depressive modes would not afford sufficient reasons to invalidate his apparently
H normal mental capacity at the time of committing the crime.

I **[37]** Merujuk kepada kes di atas sebagai perbandingan dengan kes semasa yang kita hadapi, dapat dilihat bahawa walaupun kesalahan membunuh kadangkala boleh bergantung kepada pembelaan atas dasar ketidaksempurnaan akal, pembunuhan sering kali kelihatan sebagai kesalahan yang dilakukan secara spontan berbanding dengan kesalahan dadah. Namun, terdapat pengecualian seperti yang dapat dilihat dalam kes di atas di mana perayu jelas mengetahui apa yang dilakukannya, dan kelakuannya secara nyata tidak selari dengan keadaan akal yang tidak sempurna. Oleh itu, pembelaan

atas dasar ketidaksempurnaan akal perlu dipertimbangkan dengan teliti apabila melibatkan penanaman dadah berbahaya, terutama sekali kerana ia melibatkan perkembangan berterusan dari segi masa.

[38] Keterangan SD1 mengesahkan bahawa responden adalah tidak sempurna akal dari sudut perubatan semasa tangkapan. Akan tetapi merujuk kepada keterangan saksi-saksi pendakwaan jelas menunjukkan bahawa responden sememangnya mengetahui bahawa perbuatan-perbuatan jenayahnya iaitu memiliki 193.7g cannabis, menanam 17 batang pokok ganja dan memasukkan dadah berbahaya jenis THC ke dalam badannya adalah salah dan bertentangan dari segi undang-undang.

[39] Responden telah ditangkap memiliki 193.7g cannabis yang telah dijumpai di dalam dua plastik lutsinar di dalam satu bekas berwarna biru hitam yang diletakkan di atas cabinet dapur, tiga batang pokok ganja pula telah dijumpai di dalam almari kain di bahagian kiri rumah, 13 batang pokok ganja dijumpai di dalam almari bilik pertama sebelah kiri rumah dan satu pokok dijumpai di bahagian balkoni rumah responden.

[40] Fakta bahawa responden menyimpan dadah serta menanam pokok di dalam rumahnya dengan pengudaraan suhu dikawal menggunakan alat penghawa dingin bersama lampu-lampu LED, alat pengukur 'pH' dan sebagainya menunjukkan bahawa hanya responden yang mempunyai akses ke atasnya dan memberi inferens bahawa responden ada pengetahuan bahawa perbuatan tersebut adalah salah dan bertentangan di sisi undang-undang.

[41] Sebenarnya, 'bipolar disorder' adalah keadaan kesihatan mental yang boleh menyebabkan perubahan dramatik dalam mood dan tahap tenaga seseorang. Walaupun ia dicirikan oleh keadaan naik turun, 'bipolar euthymia' adalah keadaan yang berada di tengah-tengah antara dua ekstrem tersebut. Orang yang mengalami keadaan ini sering melaporkan bahawa mereka merasa terkawal dengan emosi mereka semasa berada dalam keadaan ini.

[42] Ahli psikologi mentakrifkan 'euthymia' sebagai keadaan mental yang normal dan tenang. Bagi orang yang mempunyai gangguan bipolar, ia menggambarkan mood yang stabil yang tidak bersifat manik atau tertekan. 'Euthymia' berlaku di antara episod bipolar dan juga merupakan keadaan mood asas untuk gangguan mood lain, seperti 'borderline personality disorder (BPD) dan major depressive disorder (MDD)'.

[43] Tempoh 'euthymic' kadangkala singkat, tetapi ia berpotensi untuk bertahan selama bertahun-tahun. Satu kajian mendapati bahawa hampir 40 peratus peserta kekal euthymic selama dua hingga lima tahun, manakala

hampir 12 peratus tidak mengalami episod kemurungan, manik, atau hipomanik selama enam hingga sepuluh tahun.

[44] Oleh itu, adalah mungkin bahawa responden mungkin mengalami beberapa tempoh euthymia dan tidak sentiasa berada dalam keadaan manik atau tertekan sepanjang tempoh dia menanam pokok cannabis. Fakta bahawa dia tidak memusnahkan pokok-pokok tersebut ketika dia mempunyai peluang untuk melakukannya menunjukkan bahawa dia mempunyai niat untuk menanam pokok cannabis tersebut.

[45] Selain itu, tindakan responden adalah relevan di bawah s 8 Akta Keterangan 1950 yang menunjukkan bahawa responden mempuyai motif dan persediaan. Seksyen 8 Akta Keterangan 1950 memperuntukkan seperti berikut:

> (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
>
> (2) The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to that suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant if the conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

[46] Keterangan daripada pegawai serbuan ('SP3') bahawa responden terkejut dan cemas semasa SP3 hadir untuk serbuan turut relevan di bawah s 8 Akta Keterangan 1950 untuk menunjukkan bahawa responden adalah waras semasa tarikh tangkapan.

[47] Merujuk kepada kes Mahkamah Rayuan *Khairul Azizi bin Abdul Jalil v Public Prosecutor* [2024] MLJU 1463, mahkamah sebulat suara menolak dalihan tidak waras perayu walaupun terdapat keterangan bahawa perayu adalah seorang 'medically insane' semasa kejadian. Perayu telah gagal untuk membuktikan bahawa dia 'legally insane' dengan menimbangkan keterangan mengenai kelakuan tertuduh sebelum, semasa dan selepas perbuatan jenayah tersebut dilakukan oleh perayu:

> [41] Even assuming that Dr Rabiah's evidence is accepted that the appellant was suffering from medical insanity, to rely on the defence of unsoundness of mind, it is incumbent on the appellant to establish that he was also suffering from legal insanity. The trial judge found that the appellant had failed to establish by credible evidence that he was suffering from legal insanity. In reaching such a conclusion, he had considered the appellant's behavior, which preceded, attended or following the crime (see at para 23). He found the appellant on the day of the incident to be fully conscious and in possession of all his mental faculties as he was able to, inter alia, operate a motorcycle to the police station and describe in detail what had happened to Aidah. Further, in this case there was a motive and the appellant had told the

police he had killed Aidah as she had maligned him to others. We are unable to agree with the defence that a plea of insanity is established merely because no sane person would surrender to the police after committing a murder.

Isu ketiga

Sama ada tuan hakim tersalah arah apabila ia terlalu bergantung kepada keterangan SD1 tanpa mempertimbangkan keterangan secara menyeluruh yang dikemukakan oleh pendakwaan

[48] Di dalam kes ini, walaupun pihak pendakwaan tidak mencabar keterangan SD1 dan tidak mengemukakan saksi 'rebuttal', mahkamah tidak harus terikat dengan keterangan SD1 semata-mata tanpa mempertimbangkan fakta serta keterangan lain. Seperti mana yang telah diputuskan di dalam kes *Sek Kim Wah v Public Prosecutor* [1988] 1 MLJ 348 seperti berikut:

... Thus, the verdict as to abnormality of mind is plainly a finding of fact which must be founded on all the evidence which must be founded on all the evidence which evidence of course includes medical opinion, Even where such medical opinion is unchallenged, the trial judges would be perfectly entitled to reject or differ from the opinions of the medical men, if there are other facts on which they could do so.

[49] Justeru itu, jelas bahawa mahkamah ini tidak terikat dengan dapatan saksi pakar kerana peranan saksi pakar hanyalah untuk membantu, 'merely assisting' mahkamah untuk mencapai satu keputusan. Prinsip ini dijelaskan oleh Mahkamah Persekutuan di dalam kes *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212; [1980] CLJU 138 yang menyatakan seperti berikut:

In the Evidence Act 1950, opinion of experts are under certain conditions admissible in evidence. Who are experts are explained in s 45 of the Act. Section 46 provides that facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant. DW2 was called as an expert witness. Our system of jurisprudence does not generally speaking, remit the determination of dispute to experts. Some questions are left to the robust good sense of a jury. Others are resolved by the conventional wisdom of a judge sitting alone. In the course of elucidating disputed questions, aids in the form of expert opinions are in appropriate cases placed before juries or judges. But, except on purely scientific issues, expert evidence is to be used by the court for the purpose of assisting rather than compelling the formulation of the ultimate judgments. In the ultimate analysis it is the tribunal of fact, whether it be a judge or jury, which is required to weigh all the evidence and determine the probabilities. It cannot transfer this task to the expert witness, the court must come to its own opinion.

[50] Di samping itu, terdapat percanggahan keterangan pakar SD1 dan saksi mata seperi SP3 dan SP6 di mana SP3 memberi keterangan bahawa keadaan

kelakuan responden sewaktu ditahan. SP3 merupakan saksi fakta tentang keadaan responden ketika itu yang berdiri dalam keadaan cemas dan terkejut dengan kehadiran pihak polis (rujuk ms 53 Jld 2A rekod rayuan).

[51] Oleh itu, merujuk kepada kes *Public Prosecutor v Shalima Bi* [2016] 1 MLJ 799, Mahkamah Rayuan memutuskan:

> Where there is a conflict between the evidence of a witness of fact and a witness of opinion, the evidence of a witness of fact must as a general rule be given more weight.

[52] Begitu juga di dalam kes *Pheh Boon Kheang v Peh Boon Wang* [2007] 2 MLJ 785; [2007] 7 CLJ 616 yang memutuskan:

> It must not be forgotten that the function of the expert is not to present ready-made conclusions but rather to provide the tribunal of fact with the necessary material on which it can reach its own conclusions. Judges have their own functions and the experts have theirs. The experts must not usurp the functions of the judges. If the experts usurp the functions of the judges, they cease, in law, to assist.

[53] Penanaman ganja yang dilakukan oleh responden ini mengambil masa untuk pokok-pokok tersebut membesar dan adalah tidak logik sepanjang masa tersebut responden di dalam keadaan tidak waras. Di samping itu juga 'cultivating' ganja ini memerlukan research dan pembelajaran untuk memastikan bahawa pokok-pokok ganja tersebut hidup segar. Tindakan responden ini menunjukkan bahawa dia mempunyai pengetahuan serta sedar semasa perbuatan tersebut dilakukan.

[54] Berdasarkan kepada keseluruhan keterangan daripada saksi-saksi pendakwaan dan pembelaan, mahkamah ini berpendapat bahawa HMS telah terkhilaf dalam membuat keputusan melepaskan dan membebaskan responden serta memberi perintah agar responden diletakkan di bawah penjagaan selamat di Hospital Bahagia Ulu Kinta, Tanjung Rambutan, Perak untuk tempoh selama mana diperkenankan oleh DYMM Suitan Selangor sebagai mana peruntukan di bawah s 348(2) Kanun Tatacara Jenayah apabila responden gagal untuk memenuhi keperluan pembuktian ujian 'legal insanity' yang diperuntukkan di bawah s 84 Kanun Tatacara Jenayah.

[55] Rayuan perayu dibenarkan dan keputusan HMS diketepikan. Responden didapati bersalah dan disabitkan seperti mana pertuduhan pindaan pertama, kedua dan ketiga.

HUKUMAN

Hujahan responden (mitigasi)

[56] Ini adalah merupakan kesalahan pertama yang dilakukan oleh responden di mana dia tidak pernah ditangkap mahupun disabitkan dengan mana-mana pertuduhan sebelum ini.

[57] Latarbelakang responden iaitu berumur 48 tahun, seorang duda mempunyai dua orang anak berusia 20 tahun dan 16 tahun dan kedua-duanya masih bersekolah dan di bawah tanggungan responden sebelum ini.

[58] Responden hanyalah merupakan seorang komposer sambilan sebelum ditangkap dengan pendapatan yang tidak tetap.

[59] Pohon dipertimbangkan bahawa responden telah disahkan mempunyai penyakit 'bipolar disorder (type 1)' dan 'hyperthyroidism' sejak tahun 2009 dan pohon dipertimbangkan faktor kesihatan responden.

[60] Responden telah direman sejak 24 Mac 2022 sehingga hari pendengaran rayuan 22 Ogos 2024 dan berada di Hospital Bahagia Ulu Kinta, Perak sejak 29 November 2023 di mana dia telah menerima rawatan sehingga tarikh 22 Ogos 2024.

[61] Ketika responden ditangkap, dia telah memberikan kerjasama yang sepenuhnya kepada pihak polis. Oleh itu, berdasarkan faktor-faktor mitigasi, responden memohon hukuman yang minimum dapat diberikan kepada pertuduhan di bawah s 6 Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah s 39A(2) dan juga pertuduhan di bawah s 15(1) Akta yang sama. Manakala s 6B(1), memandangkan hanya ada satu pertuduhan, responden serahkan kepada budibicara mahkamah dan pohon hukuman berjalan serentak dari tarikh ditangkap.

Hujahan perayu

[62] Perayu memohon agar satu hukuman yang berat dijatuhkan ke atas responden memandangkan kesalahan yang dilakukan adalah satu kesalahan yang serius iaitu kesalahan penanaman dan memiliki kuantiti dadah yang banyak. Juga mahkamah perlu mengambil kira kesalahan ini adalah satu kesalahan yang serius dan juga kekerapan kesalahan tersebut.

[63] Selain daripada itu, perlu juga diambil kira bahawa responden merupakan seorang yang terkenal (*public figure*) dan sepatutnya menjadi contoh dan teladan kepada masyarakat.

[64] Oleh kerana itu mengambil kira faktor-faktor ini, kepentingan awam juga menjadi isu utama untuk menjatuhkan hukuman ke atas responden dan

apa sahaja mitigasi yang dikemukakan oleh responden perlulah dipertimbangkan juga dengan isu kepentingan awam.

[65] Perayu memohon satu hukuman yang berat seperti yang diperuntukkan di dalam Akta Dadah Berbahaya 1952 kepada setiap pertuduhan di mana di bawah s 6B, hukuman yang dikenakan adalah pemenjaraan seumur hidup dan juga sebatan yang tidak kurang daripada enam sebatan dan di bawah s 39A(2) juga boleh dilihat tempoh pemenjaraan adalah tidak kurang daripada lima tahun dan juga dikenakan sebatan yang tidak kurang daripada sepuluh sebatan.

[66] Dalam menentukan sama ada suatu hukuman sepatutnya berjalan serentak atau secara berturutan, prinsip yang diguna pakai adalah prinsip 'one transaction rule' dan 'the totality principle'.

[67] Bagi prinsip 'one transaction rule' suatu hukuman hendaklah berjalan serentak sekiranya dua atau lebih kesalahan dilakukan dalam satu fakta yang sama.

[68] Prinsip ini dapat dilihat dengan lebih jelas melalui s 165(1) Kanun Tatacara Jenayah dan melalui misalan yang diberikan bagi menghurai lanjut peruntukan seksyen tersebut.

[69] Terdapat empat cabaran atau 'test' yang perlu dijawab di dalam bagi prinsip ini iaitu melihat kepada kedekatan masa, kedekatan tempat, kesinambungan tindakan dan kesinambungan tujuan atau reka bentuk (*proximity of time, proximity of place, continuity of action and continuity or unity of purpose or design*).

[70] Prinsip kedua adalah 'the totality principle'. Di dalam prinsip ini mahkamah perlu melihat semua hukuman yang dikenakan dan memutuskan sama ada secara keseluruhannya adalah berlebihan. Mahkamah juga perlu mempertimbangkan hukuman yang sesuai untuk setiap kesalahan dan kemudian melihat ke belakang untuk melihatnya secara keseluruhan.

[71] Rujuk kepada kes *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534, YA Augustine Paul, Hakim Mahkamah Rayuan menjelaskan berkenaan kedua-dua prinsip di atas seperti berikut:

> The exercise of the discretion to determine the date of commencement of the sentence of imprisonment is dependent on the facts and circumstances of each case. In deciding whether the terms of imprisonment should be consecutive or commence at another date the court will be guided by the one transaction rule and the totality principle. Pursuant to the one transaction rule where two or more offences are committed in the course of a single transaction all sentences in respect

of these offences should be concurrent rather than consecutive (see *R v Saleem* [1964] Crim LR 482; *R v Walsh* [1965] Crim LR 248). For there to be one transaction four elements must be present, that is to say, proximity of time, proximity of place, continuity of action and continuity of purpose or design (see *Jayaraman & Ors v Public Prosecutor* [1979] 2 MLJ 88; [1979] 1 LNS 36; *Amrita Lal Hazra And Ors v Emperor* (1915) ILR 42CAL957; *Chin Choy v Public Prosecutor* [1955] 1 MLJ 236; [1955] 1 LNS 17). The rule, however, is not absolute. As Yong Pung How CJ said in *Kanagasuntharam v Public Prosecutor* [1992] 1 SLR 81 at p 83; the English courts have recognised that there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished: see *R v Faulkner* [1972] 56 CrApp 4 594, *R v Wheatley* [1983] 5 CrApp R (s) 417 *and R v Skinner* (1986) 8 CrApp R (s) 166. The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence. It is stated in broad and general terms and although it may be criticised as vague, it is necessarily in such terms in order that the sentencer may impose an appropriate sentence in each particular case upon each particular offender at the particular time the case is heard.

In explaining the totality principle His Lordship referred — (at p 85) to the view of DA Thomas in *Principles of Sentencing* (2nd Ed) at pp 57–58:

> The many decisions of the court in which the totality principle has been applied to explain the reduction of a cumulative sentence made up of correctly calculated individual parts suggest that the principle has two limbs. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects. In this regard reference is also made to *Emmins on Sentencing* (2nd Ed), p 151:
>
> > It is well established that sentences must have regard to the total length of sentence passed, particularly where consecutive sentence have been imposed, to ensure that the sentence properly reflects the overall seriousness of the behaviour.

[72] Sementara itu berkenaan dengan sama ada hukuman sepatutnya dijalankan secara berturutan atau hukuman sepatutnya dijalankan secara serentak beliau menyatakan:

> (11) The Penal Code and the Criminal Procedure Code give no direct guidance as to consecutive and concurrent sentences and our lower courts are often confronted with this perplexing question. However, should an accused be convicted of two or more offences tried together, the Singapore courts have adopted the totality test enunciated in *R v John Alistair Faulkner* (1972) 56 Cr App R 594; 1972 Crim LR 577. See *Marimuthu Balikrishnan v Public Prosecutor* [1974] 2 MLJ 145,*Public Prosecutor v Teo Heng Chye* [1989] 3 MLJ 205, *Public Prosecutor v Wong Kok Sein & Ors* [1988] 2 MLJ 436, *Public Prosecutor v Chot Saik Kam* [1991] 1 MLJ 193 and *Wong Kai Chuen Philip v Public Prosecutor* [1991] 1 MLJ 321. It is an established principle of sentencing that where consecutive sentences are passed against an offender, a duty is imposed on the sentencerto take into account the

totality of the cumulative sentences to determine whether it is justified by the criminal behavior of the offender, the degree of his culpability and the aggravating feature of the crime in the cases as a whole.

[73] Mahkamah juga telah mengambil kira kepentingan awam dan graviti kesalahan seperti yang dijelaskan dalam kes *Ong Lai Kim v Public Prosecutor and other appeals* [1991] 3 MLJ 111 yang memutuskan bahawa:

> The court will be failing in its duty if it does not impose a deterrent sentence in this case. The punishment must not only deter the appellants from committing a similar offence in the future but it must also deter others from committing such an offence. In this case therefore the punishment has to be sufficiently harsh and proportionate to the harm done, otherwise society will feel that the punishment is manifestly inadequate. The punishment must also reflect public disapproval of the crime committed by the appellants. See *R v Roberts and related appeal* [1982] 1 All ER 609 at p 61.

KESIMPULAN

[74] Dalam menjatuhkan sesuatu hukuman, mahkamah hendaklah memberi pertimbangan utama kepada kepentingan masyarakat berbanding kepentingan peribadi tertuduh. Seperti mana telah diputuskan dalam kes *Tan Sri Abdul Rahim bin Mohd Noor v Public Prosecutor* [2001] 3 MLJ 1; [2001] 4 CLJ 9 seperti berikut:

> In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. In that context the interest of justice should no doubt take into account the interest of the offender. But it is often forgotten that the interest of justice must also include the interest of the community. In assessing sentence the court should balance the interest of the offender with the interest of the victim and strike a balance, not, of course forgetting that the interest of the public should be of the uppermost consideration.

[75] Perlu diambil kira bahawa responden merupakan seorang yang terkenal (*public figure*) dan memberi pengaruh yang luas kepada masyarakat seharusnya menunjukkan contoh tauiadan yang baik kepada masyarakat dan generasi yang akan datang.

[76] Oleh yang demikian, berdasarkan kepada hujahan daripada kedua-dua belah pihak, mahkamah ini telah menimbangkan dan menjatuhkan hukuman seperti berikut:

> Pertuduhan Pindaan Pertama:
>
> Kesalahan di bawah Seksyen 6 Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39A(2) Akta sama (berat Cannabis 193.7g).

[Lapan (8) tahun penjara berkuatkuasa daripada tarikh ditangkap 24.3.2020 dan sepuluh (10) sebatan]

Pertuduhan Pindaan Kedua:

Kesalahan di bawah seksyen 6B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 6B(3) Akta yang sama.

[Penjara seumur hidup (30 tahun) berkuatkuasa daripada tarikh ditangkap 24.3.2020 dan enam (6) sebatan]

Pertuduhan Pindaan Ketiga:

Kesalahan di bawah seksyen 15(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 15(1) Akta yang sama.

[Sepuluh (10) bulan penjara berkuatkuasa daripada tarikh ditangkap 24.3.2020]

Hukuman bagi ketiga-tiga pertuduhan untuk berjalan serentak kerana melibatkan transaksi yang sama.

Rayuan pihak pendakwaan dibenarkan; keputusan HMS diketepikan; responden disabitkan seperti mana pertuduhan pindaan pertama, kedua dan ketiga.

Dilaporkan oleh Dzulqarnain Ab Fatar